	Case 5:07-cv-05784-JF	Document 4	Filed 02/04/2008	Page 1 of 4	
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8	NOT FOR CITATION				
9	IN THE UNITED STATES DISTRICT COURT				
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA				
11					
12	MORGAN A. TYSON,)	No. C 07-5784 JF (PR	2)	
13	Petitioner,) P	RDER DENYING ETITIONER'S MOTION TO		
14	VS.) P) PROCEED IN FORMA) PAUPERIS AS MOOT;) ORDER TO SHOW CAUSE) 		
15	ROBERT L. AYERS, et al.,) C			
16	Respondents.)			
17) (1	Docket No. 3)		
18	Detition on a state missen on		as filed a natition fo	a o vymit of hohoos	
19	Petitioner, a state prisoner proceeding <u>pro se</u> , filed a petition for a writ of habeas				
20	corpus pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms' ("Board's")				
21	decision denying him parole. The Court will DENY Petitioner's motion to proceed in				
2223	forma pauperis as moot because Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.				
23 24	STATEMENT				
25	In 1984, an Alameda Superior Court jury convicted Petitioner of second degree				
26	murder (Cal. Penal Code § 187). Petitioner challenges the Board of Prison Terms' denial				
27	of parole at his July 2006 parole suitability hearing. Petitioner filed three state habeas				
28	petitions in the state superior court, state appellate court and state supreme court, all of				
20	pendons in the state superior court, state appenate court and state supreme court, all of				
	Order Denying Petitioner's Motion to Proceed in Forma Pauperis as Moot; Order to Show Cause P:\pro-se\si.if\hc.07\Tyson784ifposc 1				

which were denied as of October 10, 2007. Petitioner filed the instant federal habeas petition on November 14, 2007.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

B. <u>Petitioner's Claims</u>

As grounds for federal habeas relief, Petitioner alleges: (1) the Board applied an arbitrary and repetitive reason for its parole denial based on the offense itself in violation of Petitioner's protected liberty interest in release on parole and the right to due process in the parole suitability; and (2) when the Board set its own standard of interpretation of the law, and fails to execute and enforce a legislature's statutes as intended the court has a duty to intervene to enforce the separation of powers doctrine. Liberally construed, Petitioner's allegations are sufficient to require a response. The Court orders Respondent to show cause why the instant petition should not be granted.

CONCLUSION

- 1. Petitioner's motion to proceed in forma pauperis (docket no. 3) is DENIED as moot because Petitioner has paid the filing fee
- 2. The Clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon the Respondent and the Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this order on the Petitioner.

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3. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state parole record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty days** of his receipt of the answer.

- 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of non-opposition within **thirty days** of receipt of the motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen days** of receipt of any opposition.
- 5. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that all communications with the Court must be served on respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must keep the Court and all parties informed of any change of address by filing a separate paper captioned "Notice of Change of Address." He must comply with the Court's orders in a timely fashion.

 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: <u>2/1/08</u>

JEREMY FOGEL
United States District Judge

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